

SERVICE DATE - APRIL 8, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 168X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN HARDIN COUNTY, IA (ELDORA JUNCTION LINE IN ELDORA, IA)

Decided: April 7, 2003

By petition filed on December 19, 2002,<sup>1</sup> Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a segment of line, known as the Eldora Junction Line, extending from milepost 5.10 to milepost 6.22, a distance of 1.12 miles, in Eldora, Hardin County, IA.<sup>2</sup> A request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the City of Eldora, IA, and the Iowa Natural Heritage Foundation (collectively, the City). We will grant the exemption, subject to trail use, public use, and standard employee protective conditions.

BACKGROUND

According to UP, the line has been out of service since December 2000 due to poor track condition, the line carries no overhead traffic, and there are no shippers on the line that will be adversely affected by the proposed abandonment.<sup>3</sup> UP states that it has compensated the sole shipper on the line, North Central FS (North Central), for the increased cost of truck transportation in lieu of rail

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on January 8, 2003 (68 FR 1077).

<sup>2</sup> UP indicates that, although it initially planned also to abandon its Marshalltown Industrial Lead from milepost 216.23 to milepost 212.00 in Hardin County, it subsequently decided to postpone that action.

<sup>3</sup> Prior local traffic moving to and from the line consisted of potash, urea, and diammonium phosphate products.

service, and that North Central has indicated that it will not oppose the abandonment.<sup>4</sup> UP adds that its rail service will still be available in the area in addition to truck service.<sup>5</sup>

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy in this case. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving UP of the expense of maintaining a rail line that is no longer used and allowing it to utilize its assets more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. The line carries no overhead traffic and has been out of service since December 2000. Moreover, the only shipper on the line, North Central, has indicated that it does not object to the abandonment. Nevertheless, to ensure that North Central is informed of our action, we will require UP to serve a copy of this decision on the shipper within 5 days of the service date and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

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<sup>4</sup> We note that, while we continue to actively encourage private-sector negotiations between carriers and shippers, our abandonment process should not be viewed as requiring a railroad to subsidize a shipper so that it would be able to abandon service over a line that otherwise meets the statutory criteria for abandonment.

<sup>5</sup> According to UP, Eldora is served by state highways 215 and 175, the latter of which connects to U.S. 65, a major north-south route, approximately 10 miles west of Eldora.

UP has submitted a combined environmental and historic report with its petition and has notified the appropriate Federal, state, and local government agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on February 14, 2003, and requested comments.

In the EA, SEA indicated that the U.S. Natural Resources Conservation Service (NRCS) has submitted comments stating that the area contains prime agricultural land, and that caution should be taken during salvage activities to ensure that the drainage systems and other agricultural infrastructure are not adversely impacted at the soils mapped as Nicollet and Webster Nicollet. UP stated that the proposed abandonment does not traverse the areas identified by the NRCS, and it does not believe that there are any historic sites, structures, or archeological resources in the project area. Therefore, based on the information provided from all sources to date, SEA recommended that no environmental conditions be placed on any decision granting abandonment authority.

No comments to the EA were filed by the March 14, 2003 due date. Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

On January 17, 2003, the City timely filed a request for the issuance of a NITU for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The City submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service, as required at 49 CFR 1152.29. By letter filed on March 21, 2003, UP states that it is willing to negotiate for interim trail use. Because the City's request complies with the requirements of 49 CFR 1152.29 and UP is willing to enter into trail use negotiations, we will issue a NITU as requested. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in the EA that, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use. The City requests imposition of a 180-day public use condition for the line precluding UP from: (1) disposing of the corridor, other than the tracks, ties, and

signal equipment,<sup>6</sup> except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as trestles, culverts and tunnels. The City states that the corridor is located within the Eldora city limits and would make an excellent transportation and recreation trail. It also states that conversion of the property to trail use is in accordance with local and state region plans, and that the corridor provides important green space and its preservation as a trail is consistent with that end.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subsequent to the execution of a trail use agreement. The City has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the right-of-way to be abandoned, commencing from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use. We note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. An offer of financial assistance (OFA) to acquire a rail line for continued rail service or to subsidize rail operations takes priority over interim trail use/rail banking and public use.<sup>7</sup> Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

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<sup>6</sup> On March 31, 2003, the City filed a letter asking the Board to prohibit UP from removing any ballast from the line, but not to prohibit removal of tracks and ties. In a reply filed April 4, 2003, UP stated that it agrees with and supports the request.

<sup>7</sup> See Trails, 2 I.C.C.2d at 608.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by UP of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that UP shall: (1) leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (but not track and track materials, except ballast), for a period of 180 days from the effective date of this decision, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use; and (2) comply with the terms and conditions for implementing interim trail use/rail banking as set forth below.
2. UP is directed to serve a copy of this decision and notice on North Central FS within 5 days after the service date of this decision and notice and to certify to the Board that it has done so.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for the management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the conditions imposed above have been met.
7. An offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to allow rail service to continue must be received by the railroad and the Board by April 18, 2003, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). Each OFA must be accompanied by a \$1,100 filing fee. See 49 CFR 1002.2(f)(25).
8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

9. Provided no OFA has been received, this exemption will be effective on May 8, 2003. Petitions to stay must be filed by April 23, 2003, and petitions to reopen must be filed by May 5, 2003.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by April 8, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams  
Secretary